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July 23, 2009

***Via Electronic and U.S. Mail***

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: Investigation into determination of resource sufficiency
**Docket No. UM 1396**

Dear Filing Center:

Enclosed please find an original and five copies of the Reply Brief on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

*/s/ Allison M. Wils*
Allison M. Wils

Enclosures
cc: Service List

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Brief of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 23rd day of July, 2009.

*/s/ Allison M. Wils*
Allison M. Wils

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1396**

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| In the Matter of<br><br>THE PUBLIC UTILITY COMMISSION OF OREGON<br><br>Investigation into determination of resource sufficiency, pursuant to Order No. 06-538. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | REPLY BRIEF OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES |

## I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits this Reply Brief requesting that the Oregon Public Utility Commission ("OPUC" or the "Commission") adopt a resource sufficiency methodology for determining utility avoided costs based upon a simple calculation of the utilities' capacity needs. Basing the resource sufficiency determination upon the utilities' annual peak demand will more closely mirror the utilities' actual resource acquisition practices, and result in a more accurate calculation of their avoided costs. The Commission should require PacifiCorp and Portland General Electric Company ("PGE") to abandon their past methodologies and reject their new proposals to use their integrated resource plans ("IRPs") to calculate avoided costs. Adopting the utilities' proposals will continue the unsupportable dichotomy of having avoided based on the utilities' claims of resource sufficiency during the same time period in which they will likely build and/or purchase significant amounts



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of new energy and capacity resources. This dichotomy undermines the purpose of the Public Utility Regulatory Policy Act.

The Commission's resolution of the resource sufficiency issue will have wide ranging impacts upon qualifying facilities ("QFs"), ratepayers, the utilities, net metering generators, and utility conservation programs. Avoided costs are used not only to determine the costs paid to QFs, but are also relevant for net metering customers and determining the cost effectiveness of conservation programs. In addition, the resource sufficiency/deficiency issue has become even more important as the alleged difference between the resource sufficiency avoided costs and resource deficiency avoided costs may be larger than in the past.[1/] The future viability of numerous current and future QFs, net metering projects, and conservation programs (all of which the utilities have been traditionally hostile to) will be directly impacted by the Commission's final order in this proceeding.

Neither PacifiCorp nor PGE have explained how their proposals to use the IRP timelines will work in actual practice. As explained in ICNU's Opening Brief, recently the Commission has not acknowledged the entire or critical portions of PacifiCorp's and PGE's IRPs. In other words, if we had been using the timelines for acquiring new resources in the utilities' IRPs to determine resource

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1/ PGE and PacifiCorp's recent avoided costs filings allege that the avoided costs during parts of the resource sufficiency period are less than half the avoided cost during parts of the resource deficiency period. For example, PacifiCorp's newly filed Schedule 37 shows an on-peak energy avoided cost during the first year of the resource sufficiency period of 3.72 cents per kWh compared to 8.19 cents per kWh in the first year of the resource deficiency period. PacifiCorp Advice Filing 09-012 (July 9, 2009). In contrast, PacifiCorp's current Schedule 37 has an on-peak energy avoided cost during the first year of the resource sufficiency period of 6.65 cents per kWh and 7.68 cents per kWh during the first year of the deficiency period. PacifiCorp Schedule 37-5.



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sufficiency/deficiency periods, then there would be no information the Commission could use to set the sufficiency period for avoided costs. The Commission should not hold the avoided costs hostage to the IRP process, which has recently failed to produce the necessary information for the utilities' proposals to work. The utilities' proposals can only work if the Commission decides to use the utilities proposed IRPs, which would ensure that there would no longer be any reasonable avoided costs.

## II. ARGUMENT

This Reply Brief only addresses a few new issues, because ICNU's Opening Brief addressed the majority of the arguments raised in PacifiCorp's and PGE's briefs.[2] Contrary to PacifiCorp and PGE arguments, ICNU's proposed resource sufficiency/deficiency methodology is not unduly complex. ICNU's proposal of basing resource sufficiency/deficiency determinations on the utilities' capacity needs is far simpler than the current method of estimating both capacity and energy needs, or the opaque and often not acknowledged IRP process. In addition, this is not the appropriate proceeding to evaluate whether the utilities' practices of ignoring their IRPs when they acquire new resources have been prudent. The utilities' past practices, however, are relevant to whether the IRP should be used to set avoided costs because the IRP timelines are infrequently acknowledged and rarely followed. ICNU Opening Brief at 13-14.

### 1. ICNU's Proposed Methodology is Less Complex Than Using the IRP Process

PGE and PacifiCorp complain that ICNU's proposal is too "complex." PGE Brief at 3; PacifiCorp Brief at 4. PGE also argues that "the avoided cost

[2] Staff and Idaho Power Company essentially support the positions of PacifiCorp and PGE.



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determination methodology should be a simple as possible." PGE Brief at 2. Contrary to utilities' claims, ICNU's proposal would reduce the complexity associated with the calculation of whether a utility is resource sufficient/deficient from the current practice and would be far simpler than using the complex and cumbersome IRP process proposed by the utilities.

The resource sufficiency/deficiency determination is currently based on two separate calculations of the utilities' demand and energy needs. ICNU/100, Falkenberg/3. ICNU's proposed methodology simplifies this process by considering only capacity and not energy when determining whether a utility is resource sufficient. Id. at Falkenberg/2-3, 6-7.

PacifiCorp and PGE have proposed that the utilities use the IRP process to determine their resource position. PPL/100, Warnken/3; PGE/100, Kuns-Drennan/5. The sufficiency/deficiency determination will continue to be based on an analysis of both the utilities energy and capacity needs. E.g., PPL/100, Warnken/8. The IRP process has numerous inputs, computer model simulations, addresses numerous issues not related to resource sufficiency, and includes a wide array of participants with different interests. ICNU/200, Falkenberg/1-3; PPL/100, Warnken/8. In a nutshell, the IRP process is essentially the furthest possible approach from being "as simple as possible."

ICNU's proposal to have three tiers for avoided cost prices rather than two tiers is not "very complex." PGE Opening Brief at 3. Under ICNU's proposal, if a utility is unable to meet its peak demand, then the utility should be considered resource deficient. ICNU/100, Falkenberg/7. Although ICNU proposes a different way to determine if a utility is resource deficient, there is no difference in any of the parties' proposals on how to set avoided cost prices during the deficiency period. If a utility is deficient, then the avoided costs are based on the proxy resource, the same pricing during the deficiency period as the current practice and under the utilities' proposals to use the IRP process. See id. at 7-8.

The additional complexity in ICNU's proposal is that there would be two resource sufficiency periods in order to better protect ratepayers and more accurately reflect the utilities needs. These two sufficiency periods would be based on when the utility is: 1) both peak demand sufficient and reserve sufficient; and 2) peak demand sufficient but reserve deficient. Id. Avoided costs should be lowered and QFs should not be paid any value for capacity when the utilities are truly sufficient and do not need any resources to meet either their peak demands or reserves. Id. at Falkenberg/8. There are, however, periods in which the QF should be entitled a capacity payment because the utilities are acquiring some short-term capacity resources. ICNU proposes that QFs be paid a capacity payment during the sufficiency period when the utilities have sufficient resources to meet their peak demand, but not their reserves. See id. at Falkenberg/7.

**2. Utility Prudence in Ignoring their IRPs Is Irrelevant to this Proceeding**

PacifiCorp misconstrues ICNU's position as urging that utility new resource decisions should be required to imprudently adhere to IRP timelines. PacifiCorp Brief at 9. PacifiCorp also defends its past decisions of ignoring its IRP and acquiring resources during its resource sufficiency periods and prior to the need identified in its IRP as being "prudent." Id.



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Essentially, PacifiCorp and PGE want to have their cake and eat it too by setting lower avoided costs on a resource sufficiency/deficiency calculation that they have not and are not actually intending to follow themselves. ICNU does not believe that the utilities should be required to follow their IRPs when it is prudent to depart from them. For the purposes of this proceeding, however, it is irrelevant whether the utilities' past actions taken inconsistently with their IRP were prudent. Regardless of their prudence, the utilities have a demonstrated track record of proposing IRPs which the Commission has not acknowledged and consistently departing from their IRPs when acquiring their resources. Instead of continuing under the fallacy that the utilities actually follow the timelines in their IRPs, the Commission should establish an avoided cost methodology that more accurately reflects actual utility acquisition behavior.

## III. CONCLUSION

The calculation of whether a utility has a need to acquire a new capacity resource should be based on a simple calculation of the utilities' need for capacity and not their energy needs. The inclusion of energy in the resource sufficiency/deficiency calculation has resulted in highly inaccurate avoided costs filings. ICNU's proposed methodology for determining whether a utility is resource sufficient or deficient would be easy to implement and will more closely mirror the utilities' past acquisition practices. The Commission should adopt ICNU's proposed methodology to increase the accuracy of avoided cost determinations, protect ratepayers, and benefit QFs, net metering generators and conservation programs.



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Dated this 23rd day of July, 2009.

Respectfully submitted,

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